

**E-FILED on** 2/14/07

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.,  
PETER BESSELINK, MEMORY METALS  
HOLLAND, B.V.,

Defendants.

No. C-04-03843 RMW

ORDER OVERRULING OBJECTIONS TO  
THE MAGISTRATE JUDGE'S FEBRUARY  
2, 2007 ORDER; ORDER TENTATIVELY  
GRANTING MEMRY'S REQUEST TO TAKE  
THREE ADDITIONAL DEPOSITIONS

**[Re Docket No. 433]**

KENTUCKY OIL TECHNOLOGY, N.V.,

Counterclaimant,

v.

MEMRY CORPORATION and  
SCHLUMBERGER TECHNOLOGY  
CORPORATION,

Counterdefendants.

Rule 72(a) of the Federal Rules of Civil Procedure allows parties to file timely objections to rulings of a magistrate judge in nondispositive matters. Such objections are sustained if the magistrate judge's order is "found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a).

1 On February 12, 2007 plaintiff and counterdefendant Memry Corporation filed his objection to  
2 the magistrate judge's February 2, 2007 Order Re: KOT's [Kentucky Oil Technology, NV] Motion for  
3 a Protective Order. Memry objects to the portion of that order wherein the magistrate judge limited  
4 Memry and STC to a combined total of 10 depositions per Federal Rule of Procedure 30(a)(2)(A). The  
5 court has reviewed the magistrate judge's order and finds it to be neither clearly erroneous nor contrary  
6 to law.

7 Admittedly, the case history is ambiguous as to the number of depositions allowed. However,  
8 the Case Management Conference Order dated August 23, 2006 stated that the parties were to comply  
9 with the Federal Rule of Civil Procedure, which sets forth a ten deposition limit per side. Fed. R. Civ.  
10 P. 30(a)(2)(A); *see also* Advisory Comm. Notes to 1993 Amendments to Fed. R. Civ. P. 30(a)  
11 ("Paragraph (2)(A) is new. It provides a limit on the number of depositions the parties may take, absent  
12 leave of court or stipulation with the other parties. One aim of this revision is to assure judicial review  
13 under the standards stated in Rule 26(b)(2) before *any side* will be allowed to take more than ten  
14 depositions in a case without agreement of the other parties.") (emphasis added). The fact that the court  
15 referred to KOT's previous successful attempt to limit depositions to ten per party may or may not have  
16 been in error but it did not modify the August 23, 2006 Order. The discovery history does not convince  
17 the court that the parties necessarily intended a ten deposition per party limit.

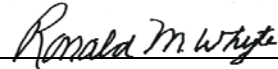
18 However, the court tentatively agrees that the three additional depositions of United Stenting,  
19 Mr. Shukov and Mr. Vanderbruggen requested by Memry are appropriate. The court will give KOT an  
20 opportunity to respond to Memry's request. If desired, KOT shall file an opposition no later than Friday,  
21 February 16, 2007.

## 22 ORDER

23 Memry's objection to the magistrate judge's February 2, 2007 order is overruled. Memry's  
24 request to take the depositions of United Stenting, Mr. Shukov and Mr. Vanderbruggen is tentatively  
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1 granted. If KOT does not file an objection to this court's tentative ruling regarding the three additional  
2 depositions, the tentative ruling will become final.

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4  
5 DATED: 2/14/07



6 RONALD M. WHYTE  
7 United States District Judge  
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16 Counsel are responsible for distributing copies of this document to co-counsel that have not registered  
17 for e-filing under the court's CM/ECF program.

18 **Dated:** 2/14/07

19 /s/ MAG  
20 **Chambers of Judge Whyte**